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Response to Comments on Proposed Amendments to:

310 CMR 7.00: Appendix C Operating Permit and Compliance Program

as required by

Title V Provisions

of

U.S. EPA Tailoring Rule with respect to Greenhouse Gases

Regulatory Authority:

**M.G.L. c. 111, Sections 142A through 142E
M.G.L. c. 21N**

August 2, 2013

In May 2012, the Massachusetts Department of Environmental Protection (MassDEP) proposed amendments to its federally-required title V Operating Permit program regulations (310 CMR 7.00 Appendix C: *Operating Permit and Compliance Program*) that add an applicability threshold for greenhouse gas (GHG) emissions. These revisions conform to U.S. Environmental Protection Agency (EPA) Tailoring Rule provisions that established a special applicability test for GHG emissions in state title V Operating Permit programs. These proposed amendments are consistent with M.G.L. c. 21N (Climate Protection and Green Economy Act), which commits the Commonwealth to address GHGs. MassDEP will submit the final regulations to EPA in order to retain federal approval of the state title V Operating Permit program under 40 CFR Part 70.

MassDEP held a public hearing and solicited oral and written testimony on the proposed regulations in accordance with M.G.L. c. 30A. On May 14, 2012, MassDEP published notice of the public hearing and public comment period on the proposed regulatory revisions in the Boston Globe, and notified interested parties via electronic mail. A public hearing was held on June 19, 2012 in Boston. The comment period closed on June 30, 2012.

No oral or written testimony was presented at the public hearing. MassDEP received written comments from the following:

- Pamela F. Faggert, Vice President and Chief Environmental Officer, Dominion Resources Services, Inc. (Dominion)
- Stephen Leahy, Vice President, Policy, Northeast Gas Association (NGA)
- James B. Robb, Senior Vice President, Corporate Strategy and Environmental Affairs, Northeast Utilities, on behalf of NStar (NU-NStar)

MassDEP did not make changes to the final regulations based on the comments received. MassDEP did make minor changes to the definition of GHG MASS BASIS so that it is clearer and consistent with the definition of CARBON DIOXIDE EQUIVALENT, as follows:

GHG MASS BASIS means the sum of the ~~potential-to-emit~~ mass amount of emissions in tons per year of the six greenhouse gases in the pollutant GHG prior to multiplying by each gas's associated global warming potential set forth in 40 CFR part 98 subpart A Table A-1 – Global Warming Potentials.

Below are summaries and responses to the comments received.

1. Comment: For facilities that already have a title V Operating Permit, beyond the requirement to include an estimate of the GHG emissions in the renewal application, Dominion supports the Department's proposed amendments as long as the estimate does not appear as a limit in the permit. [Dominion]

Response: Emission limits and other enforceable applicable requirements in the title V Operating Permit derive from underlying regulations and permits. MassDEP will not impose an estimate of GHG emissions from a renewal application as an emission limit in the facility's title V Operating Permit in the absence of a separately applicable regulation or permit condition.

MassDEP may include a description of actual or potential GHG emissions and emission units in the Facility Description section of the title V Operating Permit.

2. Comment: EPA's Tailoring Rule requires that Massachusetts adopt the necessary requirements. If it fails to do so, EPA may impose the requirements directly on Massachusetts sources through a Federal Implementation Plan (FIP). If the FIP were implemented in Massachusetts, Dominion is concerned that such a FIP would result in dual permitting by EPA and the Department. This could significantly slow the issuance of permits and modifications as well as increase costs to Massachusetts businesses. [Dominion]

Response: Once MassDEP has promulgated the regulations that incorporate GHG applicability provisions in its title V Operating Permit program EPA has no reason to issue a FIP for Massachusetts.

3. Comment: MassDEP should clarify that its current proposal addresses only a change in the emission thresholds for the state's greenhouse gas title V Operating Permit program, and not an automatic expansion of the sources which constitute a "facility" for the purposes of the state's regulation under 310 CMR 7.00 Appendix C. MassDEP's proposed change in emissions thresholds under Appendix C does not provide any notice of the agency's intent to expand the applicability of the title V Operating Permit program to new types of emission sources. If MassDEP does intend to change its rules to include new source types as "facilities" within the context of new source types required to aggregate and apply for permits under the state's title V Operating Permit program, any such process should only be undertaken after MassDEP issues a formal notice proposing the agency's intent to revise the scope of 310 CMR 7.00 regulations followed by the opportunity for public comment on the notice. [NGA]

MassDEP's proposed regulation gives no indication of the inclusion of natural gas Local Distribution Companies (LDCs) in the definition of "facility." EPA's statements on the subject in its Tailoring Rule response to comments clearly indicate that inclusion of the LDCs in the title V Operating Permit program is not appropriate. EPA stated that:

"EPA has determined that the Title V definition of facility is not appropriate for this GHG reporting rule. The GHG reporting rule serves a different purpose than the Title V program, and therefore defines a facility in a way that is more inclusive of all large emitters."

MassDEP should give careful thought to the ramifications of moving beyond a common sense determination of what constitutes a facility within the context of the Operating Permit program. Should MassDEP wish to include LDCs in the title V Operating Permit program, MassDEP should provide legally-required notice to stakeholders and consider the costs and benefits of such a proposed action. [NU-Nstar]

Response: The final amendments add a GHG applicability threshold to MassDEP's title V Operating Permit regulations as required by EPA's GHG Tailoring Rule and do not change the definition of "facility" in the regulations. Under 310 CMR 7.00 Appendix C: *Operating Permit and Compliance Program*, MassDEP continues to define "facility" as "any installation or

establishment and associated equipment, located on the same, adjacent or contiguous property, capable of emissions and are under control of the same person.”

By contrast, under 310 CMR 7.71, *Reporting of Greenhouse Gas Emissions*, MassDEP defines “facility” as “a building, structure or installation located on contiguous or adjacent properties of an entity, *or a natural gas facility.*” (italics added) Similar to EPA’s GHG reporting program, MassDEP’s reporting program likewise serves a different purpose than MassDEP’s title V Operating Permit program, and therefore the reporting regulations (i.e., 310 CMR 7.71) define a facility in a way that is more inclusive of large emitters, including LDCs. However, at this time, MassDEP does not consider LDCs to be facilities for title V Operating Permit purposes.